

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

JJS3 Foundation dba Neusole Glassworks)	
937 Windsor Ave.)	
Cincinnati, OH 45206)	
)	
Complainant,)	Case No. 13-1803-GA-CSS
)	
v.)	
)	
Duke Energy Ohio, Inc.)	
)	
Respondent.)	

ANSWER OF DUKE ENERGY OHIO, INC.

For its Answer to the Complaint of JJS3 Foundation dba Neusole Glassworks (Complainant), Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) states as follows:

1. Duke Energy Ohio admits the allegations of paragraph 1 of the Complaint.
2. Duke Energy Ohio the allegations of paragraph 2 of the Complaint and, therefore, denies all such allegations.
3. Duke Energy Ohio lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Complaint and, therefore, denies all such allegations.
4. Duke Energy Ohio lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint and, therefore, denies all such allegations.

5. Duke Energy Ohio lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Complaint and, therefore, denies all such allegations.
6. Duke Energy Ohio lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Complaint and, therefore, denies all such allegations.
7. Duke Energy Ohio admits that it has properly billed Complainant for all gas consumed at the premises associated with the Windsor Account. Duke Energy Ohio lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 7 of the Complaint and, therefore, denies all such allegations.
8. Duke Energy Ohio lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Complaint and, therefore, denies all such allegations.
9. Paragraph 9 of the Complaint contains argument and no allegations of fact. To the extent an answer is required, Duke Energy Ohio denies the allegations of paragraph 9 of the Complaint.
10. Duke Energy Ohio denies the allegations of paragraph 10 of the Complaint.
11. Duke Energy Ohio denies the allegations of paragraph 11 of the Complaint.
12. Duke Energy Ohio admits that it has transferred Complainant's unpaid gas bills from the Windsor account to the McMillan account in Complainant's name in accordance with its tariffs on file with the Commission and applicable rules and regulations promulgated by the Commission. Duke Energy Ohio denies the remaining allegations of paragraph 12 of the Complaint.

13. Duke Energy Ohio admits that Complainant has objected to the Company's transfer of the unpaid gas bills from the Windsor account to the McMillan account in Complainant's name in accordance with Duke Energy Ohio's tariffs on file with the Commission and applicable rules and regulations promulgated by the Commission. Duke Energy Ohio denies that such transfer was "wrongful" as alleged in paragraph 13 of the Complaint.
14. Duke Energy Ohio denies the allegations of paragraph 14 of the Complaint.
15. Duke Energy Ohio denies the allegations of paragraph 15 of the Complaint.
16. Duke Energy Ohio admits that it has transferred Complainant's unpaid gas bills from the Windsor account to the McMillan account in Complainant's name in accordance with its tariffs on file with the Commission and applicable rules and regulations promulgated by the Commission. Further answering, Duke Energy Ohio admits that it gave notice to Complainant of its intent to disconnect gas services provided to Complainant on the McMillan account because Complainant had failed to pay its bill in a timely manner. Duke Energy Ohio denies the remaining allegations of paragraph 16 of the Complaint.
17. Duke Energy Ohio admits that certain communications have taken place between the parties but denies the allegations of paragraph 17 of the Complaint.
18. Duke Energy Ohio denies the allegations of paragraph 18 of the Complaint.
19. Duke Energy Ohio admits that it properly disconnected gas services provided to Complainant on the McMillan account in accordance with its tariffs on file with the Commission and applicable rules and regulations promulgated by the Commission when Complainant failed to pay its bill in a timely manner. Duke Energy Ohio denies the remaining allegations of paragraph 19 of the Complaint.
20. Duke Energy Ohio denies the allegations of paragraph 20 of the Complaint.

21. Duke Energy Ohio admits that Complainant made a partial payment and that the parties agreed to a payment plan for the balance due and owing by Complainant. Duke Energy Ohio denies the remaining allegations of paragraph 21 of the Complaint.
22. Duke Energy Ohio admits that it sent a payment arrangement letter to Complainant after Complainant made a partial payment and the parties agreed to a payment plan for the balance due and owing by Complainant. Duke Energy Ohio denies the remaining allegations of paragraph 22 of the Complaint.
23. Duke Energy Ohio denies the allegations of paragraph 23 of the Complaint.
24. Duke Energy Ohio denies all allegations of the Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

25. The Complaint fails to state a claim against Duke Energy Ohio upon which relief may be granted.
26. Duke Energy Ohio asserts as an affirmative defense that pursuant to R.C. 4905.26 and O.A.C. 4901-9-01-(B)(3), Complainant has failed to set forth reasonable grounds for complaint.
27. Duke Energy Ohio asserts as an affirmative defense that at all times relevant to Complainant's claims, Duke Energy Ohio has provided reasonable and adequate service and has billed the Complainant according to all applicable provisions of Title 49 of the Ohio Revised Code and regulations promulgated thereunder, and in accordance with all of Duke Energy Ohio's filed tariffs.
28. Duke Energy Ohio asserts as an affirmative defense that, pursuant to Ohio Revised Code Section 4905.26, the Commission lacks subject matter jurisdiction and authority to award money damages.

29. Duke Energy Ohio asserts as an affirmative defense that Complainant's claims are barred by accord and satisfaction. On February 2, 2011, Complainant contacted Duke Energy Ohio and requested a payment agreement for the unpaid gas charges now in dispute, to which Duke Energy Ohio agreed. Accordingly, the parties agreed to a payment arrangement whereby Complainant would pay the unpaid balance now in dispute over the course of 24 months at \$673.00 per month plus current bill charges. Complainant defaulted on that payment agreement on March 30, 2011. On April 5, 2011, Complainant requested another payment plan, at which time Duke Energy Ohio agreed that Complainant could pay the unpaid balance now in dispute over 24 months at \$680.00 per month plus current bill charges. At various times, Complainant made payments to Duke Energy Ohio in accordance with each payment plan, thereby confirming and acknowledging Complainant's agreements with Duke Energy Ohio and affirming the Company's accord and satisfaction defense to Complainant's claims.
30. Duke Energy Ohio asserts as an affirmative defense that Complainant's damages, if any, are caused by Complainant's own acts and omissions, including but not limited to:
- a. Complainant's repeated and ongoing failure to provide Duke Energy Ohio with access to the meters associated with the Windsor Account so that the Company could obtain actual reads of those meters, thereby resulting in estimated reads over a prolonged period of time during 2010, 2011 and 2012 and higher than normal bills once Duke Energy Ohio obtained actual meter reads and issued corrected bills; and
 - b. Complainant's failure to maintain the Windsor property and all equipment located and operating at that property.

31. Duke Energy Ohio reserves the right to raise additional affirmative defenses or to withdraw any of the foregoing affirmative defenses as may become necessary during the investigation and discovery of this matter.

CONCLUSION

WHEREFORE, having fully answered, Duke Energy Ohio, Inc. respectfully moves this Commission to dismiss the Complaint of Complainant JJS3 Foundation dba Neusole Glassworks with prejudice; deny Complainant's Request for Relief, if any; and grant the Company such other, further and different relief as the Commission deems just and appropriate.

Respectfully submitted,

/s/ Robert A. McMahon
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Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served via regular U.S. Mail, postage prepaid, and electronic mail on the undersigned counsel of record for Complainant on this 24th day of September, 2013:

Brian R. Redden, Esq.
Buechner Haffner Meyers & Koenig Co. LPA
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/s/ Robert A. McMahon

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Summary: Answer ANSWER OF RESPONDENT DUKE ENERGY OHIO, INC. electronically filed by Mr. Robert A. McMahon on behalf of Duke Energy Ohio, Inc.